



DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 220411-0092]

RIN 0648-BL39

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Comprehensive Ecosystem-Based Amendment 2 for the South Atlantic Region; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correcting amendment.

SUMMARY: NMFS corrects the final rule that implemented management measures described in the Comprehensive Ecosystem-Based Amendment 2 (CE-BA 2) to multiple fishery management plans (FMPs) of the South Atlantic Region, which published in the **Federal Register** on December 30, 2011. Among other measures, that final rule modified management in special management zones (SMZs) off South Carolina in the South Atlantic exclusive economic zone (EEZ). In that final rule, NMFS inadvertently applied recreational harvest and possession restrictions for certain species to the Ft. Pierce Offshore Reef SMZ, a pre-existing SMZ off the Florida east coast. The purpose of this correcting amendment is to fix that error.

DATES: This correction is effective on [*insert date of publication in the FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Karla Gore, NMFS Southeast Regional Office, telephone: 727-824-5305, email: *karla.gore@noaa.gov*.

SUPPLEMENTARY INFORMATION: On December 30, 2011, NMFS published a final rule in the **Federal Register** (76 FR 82183) to implement management measures contained in CE-BA 2 that, among other actions, modified management in the SMZs in the EEZ off South Carolina. CE-BA 2 modified multiple FMPs and included Amendment 1 to the FMP for Pelagic Sargassum Habitat of the South Atlantic Region; Amendment 7 to the FMP for Coral, Coral Reefs, and Live and Hard Bottom Habitats of the South Atlantic Region; Amendment 25 to the FMP for the Snapper-Grouper Fishery of the South Atlantic Region; and Amendment 21 to the FMP for Coastal Migratory Pelagic Resources in the Gulf of Mexico and Atlantic Region. The final rule implementing CE-BA 2 became effective on January 30, 2012.

The final rule for CE-BA 2 modified management in the SMZs off South Carolina and limited the harvest and possession of snapper-grouper and coastal migratory pelagic (CMP) species using allowable fishing gear to the recreational bag and possession limits. None of the alternatives analyzed within CE-BA 2 included the Ft.

Pierce Offshore Reef SMZ, which is located off the Florida east coast.

In 2021, NMFS became aware of an error in the regulatory text implementing CE-BA 2 after a constituent sought clarification on whether recreational bag and possession limits apply to commercial fishermen who are fishing in the Ft. Pierce Offshore SMZ. This rule corrects that error.

Correction

In the proposed and final regulatory text for CE-BA 2 (76 FR 69230, November 8, 2011; 76 FR 82183, December 30, 2011), NMFS inadvertently included the Ft. Pierce Offshore Reef SMZ along with the SMZs off South Carolina for the restrictions on the recreational bag and possession limits. The geographic coordinates for the Ft. Pierce Offshore Reef SMZ are currently located at 50 CFR 622.182(a)(1)(xx), and the recreational bag and possession limits are currently contained in 50 CFR 622.187 and 622.382 for South Atlantic snapper-grouper and CMP species, respectively. Therefore, fishermen issued a valid Federal commercial permit for snapper-grouper or CMP species in the South Atlantic EEZ are incorrectly restricted within the Ft. Pierce Offshore Reef SMZ to the recreational bag limits identified in the table at 50 CFR 622.182(a)(2) and 50 CFR 622.382(a)(1)(v).

On April 17, 2013, NMFS implemented a final rule to reorganize the fishery regulations in part 622 (78 FR

22950, April 17, 2013). That final rule moved harvest restrictions for CMP species in certain South Atlantic SMZs, including the Ft. Pierce Offshore Reef SMZ, to the current regulatory location at 50 CFR 622.382(a)(1)(v). The table at 50 CFR 622.182(a)(2) continues to limit the harvest and possession of a South Atlantic snapper-grouper species within the Ft. Pierce Offshore Reef SMZ to the bag limits specified in 50 CFR 622.187(b).

The bag limit restriction remains in error for the harvest and possession of South Atlantic snapper-grouper and Atlantic CMP species in the Ft. Pierce Offshore Reef SMZ.

CE-BA 2 did not discuss management measures for any SMZ other than those off South Carolina. Thus, through this correcting amendment, NMFS makes two regulatory corrections. NMFS corrects the table in paragraph 622.182(a)(2) by removing reference to the Ft. Pierce Offshore Reef SMZ in paragraph 622.182(a)(1)(xx) for bag limit restrictions applicable to SMZs in the South Atlantic for snapper-grouper species. This final rule also removes reference to the Ft. Pierce Offshore Reef SMZ in paragraph 622.382(a)(1)(v) for CMP species. Upon implementation of this final rule, fishermen issued a valid Federal commercial permit for snapper-grouper or CMP species may possess commercial quantities of such species harvested in or from the Ft. Pierce Offshore Reef SMZ as was intended by

the South Atlantic Fishery Management Council (Council) through CE-BA 2.

Classification

Pursuant to section 305(d) of the Magnuson-Stevens Act, the NMFS Assistant Administrator (AA) has determined that this final rule is consistent with CE-BA 2, the applicable FMPs, other provisions of the Magnuson-Stevens Fisheries Conservation and Management Act, and other applicable law.

This final rule has been determined to be not significant under Executive Order 12866.

Pursuant to 5 U.S.C. 553(b) (B), the AA finds good cause to waive prior notice and opportunity for additional public comment because it would be unnecessary and contrary to the public interest. This correcting amendment removes the incorrect application of the recreational bag and possession limits for South Atlantic snapper-grouper and CMP species in the Ft. Pierce Offshore Reef SMZ harvested by a person issued a valid Federal commercial permit for such species in the South Atlantic EEZ. Providing prior notice and opportunity for public comment is unnecessary and contrary to the public interest because the Council document for CE-BA 2 did not consider or analyze such a restriction for the Ft. Pierce Offshore Reef SMZ, and because the regulations implementing CE-BA 2 have already been subject to notice and public comment. Providing an

additional opportunity for public comment would add unnecessary delay to the removal of the restrictions in the Ft. Pierce Offshore Reef SMZ, which remain in the regulations in error. Further, retaining the incorrect restriction will continue to cause confusion among the affected fishermen, law enforcement, and the public.

For the same reasons, the AA also finds good cause, pursuant to 5 U.S.C. 553(d), to waive the 30-day delay in the date of effectiveness for this correcting amendment.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, this rule is exempt from the procedures of the Regulatory Flexibility Act. Accordingly, no Regulatory Flexibility Act analysis is required and none has been prepared.

This final rule contains no information collection requirements under the Paperwork Reduction Act of 1995.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Recreational, South Atlantic.

Dated: April 11, 2022.

Samuel D. Rauch, III

Deputy Assistant Administrator for Regulatory

Programs,
National Marine Fisheries Service.

Accordingly, 50 CFR part 622 is corrected by making the following correcting amendment:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF OF MEXICO, AND
SOUTH ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 622.182 Gear-restricted areas.

2. In § 622.182, amend paragraph (a) (2) by:

- a. Designating the table as table 2 to paragraph (a) (2); and
- b. Revising newly designated table 2.

The revision reads as follows:

Table 2 to Paragraph (a) (2)

In SMZs specified in the following paragraphs of this section	These restrictions apply
(a) (1) (i) through (x) and (a) (1) (xxii) through (xxxix)	Use of a powerhead to take South Atlantic snapper-grouper is prohibited.
(a) (1) (i) through (x) and (a) (1) (xxii) through (xxxix)	Possession of a powerhead and a mutilated South Atlantic snapper-grouper in,

	<p>or after having fished in, one of these SMZs</p> <p>constitutes <i>prima facie</i> evidence that such fish was taken with a powerhead in the SMZ. Harvest and possession of a South Atlantic snapper-grouper is limited to the bag limits specified in § 622.187(b) .</p>
(a)(1)(i) through (xviii) and (a)(1)(xxii) through (li)	Fishing may only be conducted with handline, rod and reel, and spearfishing gear.
(a)(1)(i) through (li)	Use of a sea bass pot or bottom longline is prohibited.
(a)(1)(xii) through (xviii) and (a)(1)(xl) through (li)	Possession of South Atlantic snapper-grouper taken with a powerhead is limited to the bag limits specified in § 622.187(b) .
(a)(1)(xix) and (a)(1)(xx)	A hydraulic or electric reel that is permanently affixed to the vessel is prohibited when fishing for South Atlantic snapper-grouper.
(a)(1)(xix) and (a)(1)(xxi)	Use of spearfishing gear is prohibited.

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3. In § 622.382, revise paragraph (a)(1)(v) to read as follows:

§ 622.382 Bag and possession limits.

* * * * *

(a) ***

(1) ***

(v) Coastal migratory pelagic fish within certain South Atlantic SMZs - § 622.11(a) notwithstanding, all harvest and possession of coastal migratory pelagic fish within the South Atlantic SMZs specified in § 622.182(a)(1)(i) through (xi) and (a)(1)(xxii) through (xxxix) is limited to the bag limits specified in paragraphs (a)(1)(i) through (iv) of this section.

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